OCC argues that the Telcom Act preserved state authority to impose interconnection requirements and to control certain aspects of access. Furthermore, OCC argues that the clear purpose of Public Act 94-83 is to promote local telephone competition and is in agreement with the Telcom Act's objectives. As for the Eighth Circuit, OCC contends that there was no question of state regulatory authority at issue. OCC Reply Comments, pp. 2 and 3.

4. Shared Transport

OCC maintains that the Telco's argument that shared transport provides transport parity to CLECs is unsupportable. OCC concludes that all of the network elements needed by the CLECs to provide service in the manner which they have determined makes the most sense to entering competition in the state are not presently available, and therefore, cannot be endorsed. OCC asserts that the Department must determine whether shared transport includes only transport links and access to routing tables in the ILECs switches or if it should include more. OCC Reply Comments, p. 3.

B. AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

AT&T strongly urges the Department to require the Telco to provide combinations of network elements, including the network element platform, at cost-based prices so that it and other CLECs can enter the Connecticut residential market in a significant way. AT&T argues that requiring the provision of combined network elements is well within the authority of the Department under Conn. Gen. Stat. § 16-247b(b), is necessary to promote the pro-competitive goals set by the Connecticut legislature and is consistent with the Telcom Act, which does not preempt state power to order LECs to provide combined network elements.

AT&T asserts that the issue presented in this proceeding is whether the Department will allow the Telco to dismantle existing combinations of network elements, including the network element platform, and then require CLECs to perform the wasteful and inefficient effort of recombining the network elements through a collocation facility. AT&T contends that the Department has characterized the subject in question as "rebundling;" however, AT&T argues that rebundling only becomes an issue in most cases if the Telco is allowed to disassemble the elements in the first place. AT&T also argues that if a CLEC wishes to purchase a group of elements which are already connected in the network, it is not necessary for the Telco to take apart all the pieces in order to allow the CLEC to use those network elements in their combined, "as is" state.

In the opinion of AT&T, there is no disaggregation necessary for the Telco to provide the network element platform. Thus, the focus of this proceeding should not be on whether the Telco should be required to "rebundle" network elements, but rather whether the Telco can be prohibited from affirmatively harming competition by doing needless, costly and destructive disassembly of network elements that are already physically combined. The issue before the Department in this proceeding, according to AT&T, is whether it will allow the Telco to impose needless costs and inefficiencies, which act as a significant barrier to competition, by physically disconnecting parts of its existing local exchange network for no reason other than to make it more difficult and costly for CLECs to purchase them in combinations.

AT&T also contends that no legitimate engineering, economic, or policy justification exists to allow the Telco to disassemble currently connected network elements and requiring CLECs to reassemble them through a convoluted collocation process. AT&T cites the experience of Michigan, Colorado and Washington which have already determined that nothing in the Telcom Act or in the recent decision of the Eighth Circuit limits the power of state commissions acting under state law to regulate the provisioning of network element combinations. The authority of this Department has not, according to AT&T, been preempted by the Telcom Act. To the contrary, AT&T is of the opinion that the Telcom Act expressly preserves the Department's authority to establish or enforce requirements of state law with respect to interconnection agreements.

AT&T argues that the implications for competition will be devastating if the Department fails to take decisive action to require efficient provisioning of combinations of elements by the Telco. AT&T also argues that if the Department does not act, the

Telco will be able to tear apart the existing network connections for any of its present customers who choose to switch their local service to a CLEC. The consequences, according to AT&T, will include significant service degradation, significant increases in the potential for network failure, the imposition of substantial additional and unnecessary costs on CLECs (including the costs of installing multiple collocation facilities and the costs of incurring multiple nonrecurring charges, all payable to the Telco), and the introduction of substantial delays in the ability of CLECs to provide service to their customers. AT&T Comments, pp. 2-5.

1. Competitive Need

In the opinion of AT&T no improvement in service quality or network efficiency will be created by any of the network reengineering presumed necessary by the Telco. Furthermore, no CLEC order for element combinations will ever be able to flow through the Telco's ordering and provisioning OSSs in the way that the Telco's own customer orders will flow through. This has both quality of service and cost consequences which are totally unnecessary. From the viewpoint of AT&T, there is no technical reason why a CLEC could not be allowed to provide service to an existing customer location through the existing loop and port without the Telco dismantling those elements and forcing the CLEC to incur substantial costs and delays of reconstructing them through a collocation cage.

AT&T maintains that true facilities-based competition is not likely to develop any time soon for much of the market, particularly the residential segment. The cost of building duplicative facilities, in the opinion of AT&T, is simply too high, the local service wholesale discount available simply does not enable a new entrant to compete, and the wholesale offering of the Telco does not provide it the ability to distinguish its product from that of a pure reseller. AT&T asserts that network elements are all that remain as a way to provide Connecticut consumers with the benefits of competitive local exchange service. AT&T contends that requiring the provision of combinations of network elements at cost-based prices without additional charges or inefficiencies is absolutely essential to the development of the kind of telecommunications competition that will benefit all Connecticut customers. AT&T Comments, pp. 7 and 8.

2. Statutory Authority

AT&T states that the Connecticut Legislature has delegated to the Department broad powers under Conn. Gen. Stat. § 16-247a(a) to regulate the manner in which the Telco operates its local exchange network in Connecticut. AT&T further argues that Conn. Gen. Stat. § 16-247b(b) mandates that any telephone company must provide access to all equipment, facilities and services. AT&T contends that the broad wording of the statute encompasses the network element platform currently serving a telephone customer as well as other combinations of existing elements. In the opinion of AT&T the Department has the authority and is required by state statute to assure that the Telco makes such facilities available to CLECs. AT&T further maintains that the Department is required to make sure that the Telco does not impose any undue, discriminatory burden on CLECs in the provisioning of such facilities suggesting that recombining elements through a collocation facility results in the kind of discriminatory access that the statute prohibits.

AT&T asserts that the unilateral decision to dismantle existing network element combinations, rather than make them available to CLECs, is fundamentally incompatible with the state's goal of eliminating arbitrary and unnecessary barriers to competition. According to AT&T, the Department has the power to prevent the Telco from imposing such barriers to efficient competition and it must exercise that authority here. AT&T Comments, pp. 10-12.

3. Regulatory Constraint

AT&T maintains that the Telcom Act does not preempt state power to order local exchange carriers to provide combined network elements. Under general principles limiting federal preemption of state authority, the Telcom Act must be read as not barring the Department from regulating network element combination. AT&T also maintains that federal law establishes a dual regulatory system under which the Department retains the power to regulate intrastate facilities.

AT&T argues that the Telcom Act specifically preserves state authority to impose additional access or interconnection requirements. In the opinion of AT&T, the language of 47 U.S.C. § 251(c)(3) does not support any argument that state regulatory authority with respect to network element combinations is overridden or in any way constrained by the Telcom Act. To the contrary, AT&T contends that at least four different provisions of the Act (47 U.S.C. §§ 251(d)(3), 252(e)(3), 261(c) and 601(c)) expressly preserve the authority of state commissions to impose additional access or interconnection requirements on ILECs beyond those imposed by the Telcom Act, as long as those obligations are not "inconsistent" with that act. An order by the Department that the Telco must provide network element combinations would not, in the opinion of AT&T, be "inconsistent" with the Telcom Act. AT&T argues that because the Telcom Act expressly contemplates additional state requirements, the Telcom Act itself merely establishes minimum standards that must be met by ILECs. AT&T Comments, pp. 12-16.

Separately, AT&T argues that nothing in the Eighth Circuit's Decision presents the Department from requiring network elements be provided in combinations. First, in the opinion of AT&T, the Eighth Circuit did not address any issue of state regulatory power under state law. Rather, the Eighth Circuit's decision dealt only with a narrow question of federal law and concluded that the FCC did not have the authority under the Telcom Act to impose obligations on ILECs to provide combined network elements or to forbid ILECs from disconnecting already combined network elements. AT&T argues that no question of state regulatory authority was at issue in that decision. In the opinion of AT&T, the actions of the Eighth Circuit do not bar the Department's authority to adopt pro-competition policies and requirements that are incremental to and harmonious with those established by the Telcom Act. Second, AT&T contends that the Eighth Circuit did not reach any question as to whether network element combinations could result from contractual negotiations or arbitration awards. Third, the Eighth Circuit's decision does not question the rights of CLECs under the Telcom Act to purchase all of the unbundled network elements that they need to provide service to end-users. In the opinion of AT&T the Court emphatically reaffirms the rights of CLECs to buy network elements in all possible combinations (and always at cost-based rates).

Finally, AT&T argues that other state commissions have determined that the Eighth Circuit's decision in no way limits their power to regulate network element combinations under state law. According to AT&T, Michigan, Colorado and Washington have recently issued decisions indicating that the states have the authority even after the Eighth Circuit decision to require incumbent telephone companies to provide combined network elements.

AT&T summarizes its position on jurisdictional authority by asserting that the Eighth Circuit decision expressly recognizes state authority to regulate unbundled network elements because they are fundamentally intrastate in character and that the FCC's rules regarding network combinations were beyond the scope of the FCC's authority. According to AT&T, the conclusion is logically inescapable that state commissions acting under state law are free to impose a requirement to provide network element combinations. AT&T Comments, pp. 18-24.

4. Shared Transport

In the opinion of AT&T shared transport is a very important network element but it is not a substitute for the entire network element platform. Shared transport does not include, according to AT&T, the network interface device (NID), the loop, or the entire switching function. According to AT&T, shared transport includes only the transport links and access to the ILEC's routing tables in its switches that are necessary to access the transport on a shared basis. Even with the availability of shared transport, AT&T contends it will have to combine transport with the NID, the loop and the switch functions to provide customer service using only network elements. This produces the same inefficiencies, unnecessary costs and potential service degradation already described and will not solve the broader issue of combinations. AT&T Comments, pp., 24 and 25.

C. NEW YORK TELEPHONE COMPANY

1. Competitive Need

NYTel asserts that provisioning UNE combinations by ILECs is neither necessary to promote effective local exchange competition nor required by the Telcom Act. ILECs, in the opinion of NYTel, cannot be required to provide their competitors with an assembled network element platform as any such requirement is unnecessary to provide full local exchange competition. NYTel contends that the provision of unbundled separate network elements (unbundled) rather than combined network elements (UNE-P) is precisely what is required by the Telcom Act and nothing more. NYTel argues that it has introduced a shared transport offering that provides CLECs with at least some of the functionality of a comprehensive network and nothing more is really needed by competitors to enter the market.

NYTel maintains that the Eighth Circuit's Decision made clear that a carefully articulated regime of balanced rights and obligations (created by the Telcom Act) would be undermined if ILECs were compelled to provide their competitors with UNEs in combined form, whether or not the elements in questions were originally combined in

the incumbent's network. According to NYTel, all that is required by the Telcom Act is that telephone companies provide their competitors with access to UNEs in a manner that enables them to combine the elements themselves. NYTel states that Congress made expressed judgments about the capabilities that competing carriers would need to enter the market, and that incumbents would therefore be required to provide, but declined to impose broader, open-ended requirements on incumbents.

NYTel asserts that the environment that the Telcom Act sought to nurture is one of competition between incumbents and new entrants. In the opinion of NYTel, mandatory ILEC obligation to provide interconnection, resold services, and UNEs are narrow exceptions to the principle of competition and were not intended to displace it (i.e., competition). NYTel maintains that ILECs are expected to comply with their statutory obligations, but they are equally permitted to, and expected to compete with carriers once those obligations are met. Any requirement that ILECs recombine elements would, in the opinion of NYTel, destroy the balance by forcing one market participant to assist its competitors to an extent beyond that which Congress found appropriate.

NYTel also argues that recombination would undermine the pricing provisions of the Telcom Act. NYTel contends that the Eighth Circuit concluded that requiring ILECs to make a UNE-platform available at cost-based rates would be inconsistent with the distinct pricing regimes that the Telcom Act establishes for resold service on the one hand, and unbundled elements, on the other. NYTel maintains that its proposed service offerings give competitors numerous options, and provides ample opportunity for full and effective competition.

NYTel proposes to give competitors a means to combine UNEs through physical and virtual collocation arrangements that, in its opinion, satisfies the statutory requirements of an ILEC under the Telcom Act. In particular, NYTel offers requesting carriers the ability to combine network elements with reduced physical collocation requirements significantly improving current ILEC standards. NYTel also expresses its support for virtual collocation provided that the equipment a carrier chooses for its use has the capability to remotely establish the connection of the UNEs without assistance from the ILEC. NYTel Comments, pp. 2-4.

2. Statutory Authority

In the opinion of NYTel, state and federal regulatory bodies must honor the boundaries that the Telcom Act has drawn between UNE and resale obligations of ILECs. NYTel asserts that the question of how far incumbents may be required to go in assisting their competitors through the provision of network elements is not a policy decision to be debated in regulatory arenas, but one that has already been addressed by Congress and clarified by the courts. NYTel states that the Eighth Circuit ruling did not merely set a limitation on the regulatory jurisdiction of the FCC, but simultaneously interpreted the Telcom Act as a source and a limitation of ILEC obligations to facilitate competitive entry. NYTel further asserts that the Eighth Circuit ruling does not make combinations "illegal," but prevents ILECs from being compelled to offer combined elements. The Telcom Act, according to NYTel, articulates a balanced regulatory scheme in which incumbents are to play a very specific role lying somewhere between fully independent market participation and mere handmaidens to their competitors' market entry plans.

NYTel asserts that under the Telcom Act an ILEC may not be required to offer element combinations such as those sought by many of the new competitors. NYTel argues that the Telcom Act imposes limits on the extent to which ILECs can be required to depart from their role as competitors in order to assist other companies' market entry plans through the provision of network elements. NYTel also argues that imposing a recombination or rebundling requirement on ILECs, whatever its source, would simply be inconsistent with the regulatory scheme that the Telcom Act established. NYTel notes that § 261(c) of the Telcom Act provides that the state regulatory authorities such as the Department may not establish requirements which are inconsistent with the Telcom Act. NYTel cites to regulatory actions in Massachusetts and Maryland where the respective state commissions acknowledged the limitations imposed by the Eighth Circuit on state attempts to require ILECs to offer element combinations. NYTel suggests that the issue here is not the affirmative scope of the Department's regulatory jurisdiction under the General Statutes of Connecticut; rather, whether the Telcom Act forbids the imposition of these specific combination requirements. NYTel also notes that absent the Telcom Act's prohibition, nothing in Connecticut law warrants the Department requiring ILECs to offer element combinations. Specifically, NYTel argues that nothing in Conn. Gen. Stat. § 16-247b(b) directly relates to the issue of provisioning element combinations to competitors. NYTel Comments, pp. 9 and 10.

3. Regulatory Constraint

NYTel maintains that the Telcom Act imposes limits on the extent to which ILECs can be required to depart from their role as competitors in order to assist other companies' market entry plans through the provision of network elements. NYTel argues that imposing a recombination or rebundling requirement on ILECs whatever the source, would be inconsistent with the regulatory scheme that the Act established. NYTel further cites the separate experiences of Massachusetts and Maryland where each state concluded that further action on this issue was not permitted. NYTel argues that no Department order or rule requiring it to offer element combinations is required or would be permissible under the Telcom Act. NYTel Comments, pp. 11 and 12.

Additionally, NYTel claims that provisions of the Telcom Act do not prevent ILECs from voluntarily agreeing to provide element combinations in an interconnection agreement or otherwise. However, NYTel contends that any agreement approved by NYTel providing UNE-Ps and dated prior to the Eighth Circuit's ruling can hardly be interpreted as voluntary. NYTel contends that its agreements include specific provisions that in effect, amend such agreements automatically to reflect changes such as those introduced by the Eighth Circuit interpretation. NYTel asserts that because questions relating to intent and effect of provisions in interconnection agreements must be resolved in the light of the unique language, terms, and provisions of each agreement, such issues should be addressed separately in proceedings brought by parties to particular agreements, and not in a general proceeding such as the instant docket. NYTel Comments, p. 21.

4. Shared Transport

NYTel claims that it has made available for a specified time period, pursuant to its merger agreement, shared interoffice transport in conjunction with UNE switching including access to signaling functions used on a shared basis. It is the opinion of NYTel that by combining these functionalities into a single, available package, shared transport provides a significant portion of the functionality that would be available through a UNE platform. NYTel Comments, p. 14.

D. CABLEVISION LIGHTPATH - CT, INC.

1. Competitive Need

In its comments, Lightpath proposes that loop-transport interconnection be considered by the Department. According to Lightpath, to date, neither the Department nor the FCC have specifically addressed this topic; however, Lightpath asserts that loop-transport interconnection at cost-based rates is essential to further competition. Lightpath contends that the Telco is required to interconnect unbundled network elements at cost-based rates as a means to promote true facilities-based competition in the Connecticut local exchange market. Lightpath argues that nothing in the Eighth Circuit's order relieved ILECs such as the Telco from their obligation to interconnect a loop and dedicated transport, thereby providing extended loops for a requesting carrier. To the contrary, Lightpath argues that the Eighth Circuit did not address the FCC's separate rule under § 251 of the Telcom Act that ILECs must provide the simple cross connection inside central offices needed to interconnect a loop and dedicated transport. Lightpath also suggests that provisioning such extended loops is not burdensome and has previously agreed to interconnect unbundled elements in a number of its interconnection agreements, including its agreement with SNET America, Inc. (SAI). Lightpath contends that current agreements are of limited duration and asks the Department to make extended loops a part of the permanent competitive landscape by affirming the Telco's obligation to interconnect unbundled elements including loop-transport interconnection at cost-based rates.

Additionally, Lightpath argues that extended loops are essential to its strategy. In Lightpath's opinion extended loops, like ordinary-length loops, require a CLEC to use its

own facilities and do not involve an end-end combination, as does the UNE platform. Lightpath claims that in extended loop arrangements, CLECs provide the dial tone, originating from their own switches, and not the ILEC. Furthermore, extended loops are implemented through the interconnection of two unbundled network elements: (1) an ordinary voice-grade loop that connects the customer's premises to the serving central office at the subscriber distribution frame; and (2) a dedicated, voice-grade interoffice transmission channel that runs from the trunk distribution frame in the serving central office to the requesting carrier's designated collocation node in another central office. In the opinion of Lightpath, there is no controversy over the ILEC's obligation to provide each of these unbundled elements on a stand-alone basis and at cost-based rates. Lightpath contends that in order to make extended loops work as a critical transitional strategy for true facilities-based CLECs, both the voice-grade loop and the voice-grade dedicated interoffice transmission element, as well as the cross connection, must be made available at cost-based rates pursuant to § 252(d)(1) of the Telcom Act.

The importance of cost-based extended loops, implemented through loop-transport interconnection, to facilities-based competition cannot be understated in the opinion of Lightpath. Lightpath asserts that extended loops allow a facilities-based CLEC to provide facilities-based service at a reasonable cost to a distant customer who would otherwise only be able to obtain service from the Telco. Specifically, loop-transport interconnection allows a facilities-based CLEC an ability to serve its customers using simple cross connections rather than collocating in each end office. Lightpath Comments, pp. 3-6.

2. Statutory Authority

Lightpath maintains that the Telco's refusal to rebundle network elements is consistent with the positions taken by a number of ILECs since the Eighth Circuit Court ruled last year. In the opinion of Lightpath, the disagreement between the Telco and the CLECs centers on whether a request by a CLEC for an ILEC to provide UNE-Ps, end-to-end combinations are an attempt to obtain finished local exchange services for resale at a wholesale discount greater than the statutory wholesale discount for such services.

Lightpath, however, asserts that the Department has independent authority under the General Statutes of Connecticut to order the Telco to provide loop transport interconnection at cost-based rates. Lightpath also maintains that its request for cost based loop transport interconnection from the Telco does not raise the legal issues being addressed by the Eighth Circuit. In particular, Lightpath argues that extended loops are not end-to-end combinations and therefore, do not implicate the distinction between the UNE-P and the resale of finished local services. Extended loops have not been a subject of disagreement, according to Lightpath, because they cannot under any circumstance, serve as a substitute for resale or a competitor's use of its own facilities. Second, the extended loop transport interconnection sought by Lightpath is not an existing network element combination and, therefore, is not subject to the limitations set out by the Eighth Circuit for recombined network elements. Lastly, unlike the UNE platform, extended loops do not require shared transport; rather, loop transport interconnection uses dedicated transport to route calls to and from remote customers. Therefore, Lightpath concludes that the legal issues that have occupied the Eighth Circuit are simply irrelevant to loop-transport interconnection.

In the opinion of Lightpath, a Department order that the Telco must provide extended loops is entirely consistent with the goals set forth by the Conn. Gen. Stat. § 16-247a. Lightpath maintains that extended loops allow a facilities-based CLEC to provide high quality, affordable telecommunications services to residential and business customers. According to Lightpath, extended loops will increase competition and provide customers with a wider selection of services.

Lightpath also contends that Conn. Gen. Stat. § 16-247b(b) provides the Department with broad authority to require the Telco to furnish cross connections and rebundle network elements. Lightpath asserts that this provision does not limit the type of equipment or facilities, nor does it dictate how that equipment must be provided (i.e., the Department may order the Telco to unbundle network elements or have them recombined). Further, Lightpath maintains that the Telco currently uses cross connections to provide services to its customers and must by law treat the CLECs in the same manner it treats itself and its affiliates. It is Lightpath's contention that the Telco has voluntarily entered into an interconnection agreement with its affiliate SAI, wherein it committed to interconnect unbundled elements, presumably at cost-based rates. Lightpath states that the Telco must now do so for any requesting carrier or it would be in violation of the nondiscriminatory requirements of Conn. Gen. Stat. § 16-247b(b).

Lightpath strengthens its argument for loop transport interconnection by noting that the Telco currently provides CLECs cost-based cross connections between unbundled loops and collection nodes. Lightpath claims that these cross connections are necessary to connect a loop with dedicated transport and involve nearly the identical functionality. Lightpath considers the current position of the Telco to constitute tacit discrimination and asserts that the Department should order the Telco to provide loop transport interconnections, and extended loops, at cost-based rates.

Additionally, Lightpath maintains that the Department has the authority to confirm and clarify the scope of ILEC obligations directly under §§ 251 and 252 of the Telcom Act. (This is the same authority that the Department typically exercises when it arbitrates interconnection agreements under §§ 251 and 252 of the Telcom Act). However, Lightpath notes that the Department need not concern itself with the interplay of federal-state authority intrinsic to these two sections because requiring extended loops at cost-based rates is perfectly consistent with FCC rules.

Lastly, Lightpath encourages the Department to exercise its authority under §§ 251 and 252 of the Telcom Act to confirm that FCC requirements set forth in its Local Competition Order regarding cross connections are complied with by the Telco. Lightpath also suggests that the Department has independent authority under state law (specifically Conn. Gen. Stat. §§ 16-247a(a), 16-247a(f) and 16-247b(b)) to require extended loops. According to Lightpath, various sections of the Telcom Act make it clear that the states continue to have authority, pursuant to their own state law, over interconnection agreements and other matters addressed by the local competition provisions of the Telcom Act. Lightpath Comments, pp. 7-12.

3. Regulatory Constraint

Lightpath suggests that nothing in the Eighth Circuit decision limits the authority of state commissions acting pursuant to independent state law to impose element combination obligations on ILECs. Lightpath claims that the ILECs have argued that the Eighth Circuit's decisions should be read expansively not only as foreclosing an extended loop requirement under § 251 of the Telcom Act, but also as affirmatively preempting an extended loop requirement under independent state law. Lightpath also suggests that such a reading is specious because the Eighth Circuit did not review, let alone preempt, any independent state laws. To preempt state law, Lightpath asserts that the Eighth Circuit would have needed to conduct a specific preemption analysis such as the one contemplated by § 251(d)(3) of the Telcom Act. In summary, Lightpath maintains that the Department continues to have the full authority, under state law to require ILECs to provide loop-transport interconnection (and thereby offer extended loops) at cost-based rates. Lightpath Comments, p. 12.

4. Shared Transport

Lightpath maintains that shared transport is an essential component of the UNE platform sought by competitors to the ILEC. Lightpath defines shared transport as a traffic-sensitive transmission functionality, charged on a per-minute basis, that enables individual phone calls to be carried between the serving ILEC end office and the terminating ILEC end office (sometimes through a tandem). Lightpath asserts that ILECs must make shared transport available to CLECs as an UNE if they are to be in compliance with FCC rules. Lightpath also notes that ILECs have challenged this determination, arguing that shared transport is not a single element capable of unbundling but is inextricably tied to switching functionality.

Additionally, Lightpath notes that loop transport interconnection does not require shared transport like the UNE platform relying instead on dedicated transport. In the opinion of Lightpath, the shared transport issues raised by the ILECs before the Eighth Circuit and the Department have no relevance in the matter of loop-transport interconnection. Accordingly, Lightpath believes the Department should have no reservations ordering the Telco to provide loop-transport interconnection and thereby extended loops. Lightpath Comments, pp. 13 and 14.

E. MCI TELECOMMUNICATIONS CORPORATION

1. Competitive Need

MCI maintains that the provision UNEs is essential to the development of facilities based competition in the local exchange market. According to MCI, combinations of network elements provided by ILECs will allow new entrants to construct, through the use of leased facilities in whole or in part, their own local exchange network from which they can offer local exchange service. MCI states that facilities based competition will evolve from combinations as traffic volumes change. MCI also states that it will substitute shared leased transport for dedicated leased transport and eventually its own dedicated transport. According to MCI, leased combinations afford CLECs the ability to reach beyond their own facilities, which are initially limited to urban areas, to serve customers in all areas of the state.

MCI suggests that the issue of combinations is much broader than just total combinations. Specifically, MCI wants the ability to combine elements such as loops and transport (with concentration equipment) to extend the reach of their networks. MCI claims that a facilities-based provider using network element combinations in conjunction with its own facilities can provide innovative service to consumers through differentiation of its products and services as well as price differentiation. In the opinion of MCI, combinations of network elements are considered necessary for facilities-based providers like MCI, to provide telecommunications services to their end-users. Accordingly, access to combinations of network elements must be provided by the Telco to CLECs in a reasonable and non-discriminatory manner.

Conversely, MCI notes that resale, while significantly easier than providing facilities-based local exchange service, is merely a re-billing of the Telco's retail services. In the opinion of MCI, resale results in a host of Telco clones offering basically the same products and services at similar prices. With resale, the CLEC has no ability to control its costs.

MCI proposes that, upon request, the ILEC be required to combine network elements for CLECs. MCI commits to paying all reasonable, forward-looking costs for the ILEC to perform any combinations. MCI considers its proposal to be efficient, cost-justified, and non-discriminatory. MCI asserts that the ILEC already has complete and unfettered access to all elements in its network; and therefore, requiring the ILEC to do any actual combining of those elements for CLECs, does not impose any additional type of work on the ILEC than it currently provides to itself. If additional work is required, MCI proposes that CLEC be responsible for the costs associated with this work.

Lastly, MCI claims that while its proposal is reasonable, it requires the Department to order the Telco to provide network element combinations to CLECs if local exchange competition is to be furthered. MCI Comments, pp. 4-8.

2. Statutory Authority

MCI asserts that the issue before the Department is not whether CLECs can use combinations (either total combinations or other types of combinations) to provide local exchange service, but how CLECs should combine network elements leased from the incumbent provider. MCI states that the only reasonable and efficient way for CLECs to have access to network element combinations is for the ILEC to actually combine the elements (if there is any actual work to be done) and for the CLEC to pay the ILEC for the work performed (based on forward looking costs).

MCI maintains that the Department was granted broad authority to implement the pro-competitive goals of Public Act 94-83. According to MCI, Conn. Gen. Stat. §§ 16-247a and 16-247b provide sufficient legal basis for the Department to order the provision of unbundled element combinations. MCI encourages the Department to exercise its authority to promote the development of effective and sustainable local competition and require the Telco to combine network elements for CLECs subject to reasonable charges for the forward looking efficient costs it incurs to perform such combinations.

MCI also contends that Conn. Gen. Stat. § 16-247a sets forth expansive, pro-competitive goals for the provisioning of telecommunications services in Connecticut. Specifically, Conn. Gen. Stat. § 16-247a provides the Department with the authority to implement the broad scheme of pro-competitive actions to further telecommunications competition in Connecticut. Connecticut courts, according to MCI, have consistently held that underlying the enabling statute for the Department is a legislative intent to rely upon the Department to regulate and supervise public utilities and have found the Department's regulatory authority to be quite broad. In the opinion of MCI, the Department possesses sufficient authority to require the Telco to provide UNE combinations to CLECs. MCI urges the Department to acknowledge and affirm its legal authority and require the Telco to provide UNE combinations to CLECs as a matter of state law. MCI Comments, pp. 8-10.

3. Regulatory Constraint

In the opinion of MCI, the Telco's unwillingness to voluntarily provide UNE combinations to CLECs, (even if the elements are already combined in its network) is indefensible. According to MCI, the Eighth Circuit Decision in no way prohibits the Telco from providing network element combinations to CLECs. MCI also argues that the Eighth Circuit decision does not preclude states from ordering such provisions by the ILEC. MCI argues that the authority of state regulatory agencies to adopt rules requiring ILECs to provide combinations of elements was not addressed in the Eighth Circuit's Decision. MCI notes that the Ohio Public Utility Commission, the Colorado Public Utility Commission and the Washington Utilities and Transportation Commission have individually concluded that the Eighth Circuit's decision does not preclude independent actions by state regulators. Additionally, MCI claims that Colorado and Washington have each concluded that nothing in the Eighth Circuit's decision precludes a state from requiring an ILEC to provide combinations as long as those requirements are consistent with relevant law. In support of its opinion, MCI refers to §§ 261(c) and 601(c) of the Telcom Act, which confers additional authority on a state agency.

MCI surmises that the Telco's position on this issue that it will not willingly provide such combinations until such time as it is ordered by the Department to make UNE combinations available to the CLECs. MCI further maintains that a Department order requiring the Telco to provide assembled bundled network elements would be consistent with the Telcom Act. According to MCI, nothing preempts the Department from requiring the Telco to combine network elements. MCI argues that the Department retains the authority under state law to order the Telco to provide UNE combinations, where requested; and, where elements are currently combined, to prohibit the Telco from disconnecting them. In so ordering, MCI believes that the Department will fulfill its duty to protect consumer interests, promote efficient and effective local competition, and prevent unreasonable discrimination. MCI also contends that action which furthers competition, such as ordering the provision of combined network elements, is clearly consistent with the underlying purposes of the Telcom Act. MCI Comments, pp. 10-16.

4. Shared Transport

MCI maintains that shared transport is an UNE that the Telco is required to provide to CLECs pursuant to the Local Competition Order. According to MCI, the FCC determined that shared transport is a network element to which access must be provided by an ILEC. MCI also maintains that the Telco is required to provide shared transport to it because of the MCI/Telco interconnection agreement. MCI concludes that there should be no issue as to whether or not shared transport is a network element which the Telco must provide.

MCI notes, however, that the Telco has not offered to provide shared transport arguing that it is not obligated to provide it by terms of the Eighth Circuit decision. MCI claims that the Telco is against providing shared transport because of the FCC's attempt to redefine shared transport. MCI claims the FCC's requirement in the First Report and Order for an ILEC to offer requesting carriers access, on a shared basis, to the same interoffice transport facilities that the incumbent uses for its own traffic remains unaffected by the actions of the Eighth Circuit..

MCI rejects the Telco's position. According to MCI, the Eighth Circuit decision does not prohibit an ILEC from combining elements. MCI also argues that the Eighth Circuit decision in no way vacated the FCC's conclusion that an ILEC must provide shared transport. Finally, MCI notes that the FCC Third Report and Order clarifies its previous definition of the unbundled network element shared transport and did not redefine shared transport as a combination of elements.

MCI contends that the Telco should be required to provide shared transport as an unbundled element. According to MCI, if the Telco is not required to provide shared transport, CLECs will be forced to carry traffic over dedicated transport. In MCI's opinion, the prohibitive costs of dedicated transport would force CLECs to confine the development of their networks to urban, high-traffic areas and limit the benefits of competition to only large businesses. MCI Comments, pp. 18-20.

F. SOUTHERN NEW ENGLAND TELEPHONE COMPANY

1. Competitive Need

The Telco states that nothing more need be done to promote competition in Connecticut. Resale, according to the Telco, fulfills the shared facilities goal set for in Public Act 94-83 giving carriers access to the underlying infrastructure on a full service basis. Specifically, the Telco suggests that competition would not suffer if the Department were to refrain from requiring it to provide rebundled services. The Telco suggests that requiring it to rebundle UNEs might have the effect of hindering competition. Telco Comments, p. 10.

The Telco also argues that new entrants are provided by the Telcom Act three options for entering the market each with correspondingly different levels of risk to the entrant. Resale presents the least risk, while unbundled elements, (which are usually purchased in some combination for use with the carriers own facilities), represents a middle ground, but requires forecasting and engineering. The third option available to new entrants is complete self-provisioning, with interconnection to the ILECs' facilities. The Telcom Act, according to the Telco, did not provide any catchall provision obligating ILECs to provide any and all services that new entrants might find useful in advancing their market entry strategy. The Telco further asserts that the Telcom Act did not allow entrants to mix and match the most attractive features of the unbundled element and resale alternatives to obtain the benefits of TSLRIC-based rates of unbundled elements and the zero risk factor associated with resale. Telco Comments, p. 7.

The Telco contends that the UNE-Platform is identical to its resale offering and provides a comparative illustration to support its contention. The only distinction, according to the Telco, is the pricing scheme for each option. In particular, the resale offering being priced at its retail rate minus 17.8% avoided cost, while the UNE-Platform is priced at TSLRIC plus contribution to the Telco's joint and common costs. The only other significant difference, according to the Telco, is which carrier bills access charges, with the CLEC billing access for the UNE-Platform.

The Telco expresses the opinion that Congress, by pegging wholesale rates to existing retail rates, ensured that wholesale rates would include the same subsidies contained in the retail rates, thereby ensuring that new entrants buying resale would support universal service. According to the Telco, requiring it to offer rebundled UNEs to CLECs shifts the implicit subsidy the Telco receives today to MCI, AT&T and other CLECs, while leaving it with below cost services and no opportunity for full recovery of costs. Telco Comments, pp. 16-18.

The Telco maintains that the Department need not do anything more to further competition in Connecticut for several reasons. For example, the Telco notes that the Department has already required it to unbundle its local service network. The Department has also required the Telco to resell its noncompetitive and emerging competitive telecommunications services to CLECs. The Telco claims that the Department has previously found these two requirements to constitute a balanced approach to opening Connecticut's telecommunications marketplace. Therefore, the Telco concludes that the current approach to competition, with unbundling and resale requirements, enables CLECs to supplement their networks with UNEs and/or use the Telco's resale products to serve customers in areas where they do not have facilities. The Telco argues that a requirement that it rebundle UNEs will, defeat one of the

primary goals of Public Act 94-83, the development of a "network of networks." In the opinion of the Telco, a rebundling requirement would eviscerate any true facilities-based development, allowing CLECs to purchase the Telco's existing engineered network at forward-looking cost without the risk associated with capital investment. Telco Comments, pp. 12 and 13.

Further, the Telco asserts that mandating it to recombine UNEs could cause the Telco to replicate its current resale offering. The Telco argues that this requirement could effectively provide CLECs with the ability to selectively use resale and UNE combinations, (specifically the UNE-Platform), where it is most profitable to CLECs, placing all of the financial and competitive risk on the Telco. According to the Telco, the CLEC would not have to: worry about defining and designing its network requirements, engineer and build any facilities of its own, and not be concerned with the best way to combine individual facilities. The Telco maintains that CLECs must be able to do all of the above, without paying the wholesale rates applicable to resale under 47 U.S.C. § 251(c)(4), while at the same time, avoiding payment of access charges. Telco Comments, p. 16.

2. Statutory Authority

The Telco maintains that neither Connecticut state law nor the Telcom Act requires a telephone company to rebundle its unbundled network offerings. However, both Connecticut law and the Telcom Act require the Telco to unbundle its network which the Telco claims to have complied with. According to the Telco, the concept of rebundling was never contemplated under Public Act 94-83, nor was such a requirement ever espoused by any CLEC during implementation of that act as being necessary for the development of effective competition in Connecticut. The Telco contends that the legislative history of Public Act 94-83 very clearly shows that the law, while generally seeking to open up the local telecommunications market, included the Connecticut Legislature's desire to achieve this goal through focusing on facilities-based deployment of alternative networks.

The Telco supports making UNEs available to requesting CLECs so that they can utilize them in total, or in conjunction with network elements that they themselves provide, or obtain from other providers in order to create a service offering to their end users. Competition, according to the Telco, does not require the Department to order the provision of rebundled UNEs. Rather, competition, as envisioned by the Legislature and the Department, requires that the Telco not be ordered to rebundle its UNE offerings.

The Telco asserts that Conn. Gen. Stat. § 16-247b(b) does not provide a legal basis for ordering the provision of rebundled network elements. According to the Telco, there were absolutely no discussions concerning rebundling at the time Public Act 94-83 was passed. The Telco suggests that if rebundling were ever contemplated it would have been negotiated as part of the Stipulation adopted by the Department in its September 22, 1995 Decision in Docket No. 94-10-02, DPUC Investigation into the Unbundling of the Telco's Local Telecommunications Network. Telco Comments, pp. 11-14.

3. Regulatory Constraint

The Telco maintains that while the Telcom Act made dramatic changes to the pre-competition landscape in the country as a whole, it also affirmed the proactive direction the Connecticut Legislature and the Department had chosen to bring telecommunications competition to Connecticut. The Telco concludes that a state order requiring the provision of rebundled network elements would be inconsistent with the Telcom Act. In the opinion of the Telco, the Eighth Circuit decision resolved the issue by affirming the dramatically different pricing standards set forth in the Telcom Act for resale and UNEs which would be lost if rebundling is ordered by the Department. According to the Telco, the Eighth Circuit ruling was limited because the only real option it foreclosed to competing carriers was the option to engage in rate arbitrage by purchasing what is tantamount to resold service at UNE-based rates. The Telco states that the Eighth Circuit Decision properly resolves the problem Congress intended to prevent.

The Telco asserts that a requirement to provide a rebundled network element platform giving CLECs a substantial, risk free discount on the Telco's local service offering over and above the current discount provided under resale provisions of the Telcom Act can not have been the intent of that act. In the opinion of the Telco, the Telcom Act requires that a CLEC using UNEs assume important responsibilities that resellers avoid by taking the Telco's finished resale services. Therefore, the Telco concludes that an order requiring it to rebundle UNEs would be inconsistent with the clear edicts of the Telcom Act. Telco Comments, p. 20.

4. Shared Transport

The Telco claims that the provision of shared transport (common transport) as defined by the FCC, supplies the same transport and switching functionality as an ILEC rebundled network element platform. The Telco concludes that shared transport requires a combination of end office switching, tandem switching and interoffice transmission facilities, each of which is a separate UNE, that is afforded the same functionality as that provided by the Telco assembled UNE-P sought by CLECs. According to the Telco, shared transport involves provisioning of all its interoffice facilities and switching facilities as a combined whole, priced at cost-based rates. Therefore, shared transport not only provides the same primary functionality as the UNE-P, but it also obliterates the resale/UNE distinctions made in the Telcom Act in the same way as the UNE-P. Telco Comments, p. 21.

G. SPRINT COMMUNICATIONS COMPANY, INC.

1. Competitive Need

Sprint argues that the Department's policy goal of fostering competition in all telecommunications markets and economic efficiency demand that UNEs be made

available on a rebundled basis. Sprint maintains that the Telcom Act sought to bring broad-based competition to the telecommunications market by imposing, among other things, an obligation on ILECs to provide to any requesting carrier interconnection to their network at parity to themselves and their affiliates and on nondiscriminatory rates, terms and conditions. In the opinion of Sprint, a Department order requiring the provision of rebundled network elements assembled by a telephone company would be necessary to further competition in the provision of telephone exchange service or exchange access. According to Sprint, UNE-P is currently the only service delivery option available that permits CLECs to quickly, effectively and profitably compete with ILECs across all geographic areas and customer segments. Furthermore, Sprint argues that the offering of UNE-Ps significantly enhances the likelihood of facilities-based competition by providing CLECs with a ready path for a phased build-out of their own local service facilities. Sprint foresees little competition outside of major metropolitan areas and for most residential consumers and small businesses for the foreseeable future without UNE-P.

Sprint contends that the Telco has offered to only provide UNEs to CLECs and only on a physical collocation basis requiring them to recombine on their own. Sprint also contends that the Telco's refusal to recombine UNEs imposes added costs and burdens upon CLECs (including Sprint), to which the ILECs are not subject in providing the same service. In the opinion of Sprint, this strategy adversely impacts upon the CLECs' ability to enter the Connecticut local exchange market and seriously impedes the development of full and effective competition for telecommunications services in Connecticut. Sprint recommends that the Department adopt the UNE platform because it will:

- enable CLECs to offer competitive local exchange services to a broad range of customers;
- avoid disruptions of service that will necessarily result from CLECs running jumpers to UNEs in leased collocation space, and disconnecting and reconnecting jumpers upon change of local carriers;
- avoid costly leased collocation facilities;
- avoid unnecessary duplication of facilities;
- enable ILECs to extend ordering and provisioning capabilities to CLECs with minor modifications to their existing order entry systems;
- enable ILECs to maintain the integrity of their networks, related tracking systems and databases; and
- limit the need for additional administrative and system costs to handle network element combination orders and reduce the number of potential breakage and trouble points.

Sprint maintains that a Department order to require provisioning of recombined UNEs to CLECs is sound economic policy and would promote competition. Sprint claims that current Telco practices impedes the ability of CLECs to enter the local exchange market in Connecticut thereby according an unfair and unwarranted competitive advantage over CLECs seeking competitive entry to Connecticut. Sprint Comments, pp. 3-6.

2. Statutory Authority

Sprint asserts that the recombination of UNEs serves the interests of CLECs, ILECs and Connecticut consumers by promoting the development of a competitive local exchange market while ensuring that service quality is maintained. Sprint offers the opinion that the Department must require UNEs be rebundled for CLECs in order to satisfy the Department's goals of fostering competition in the telecommunications market for the benefit of all Connecticut consumers in all geographic areas of the state. Sprint maintains that in the wake of the Eighth Circuit ruling, states retain the authority to issue orders requiring UNE combinations under applicable state law provisions. In the opinion of Sprint, the Department has the requisite authority to issue an order requiring the provision of rebundled network elements assembled by an ILEC. Sprint suggests that Conn. Gen. Stat. §§ 16-247a(4) and 16-247a(5) mandates Department action in the face of the Telco's unwillingness to provide rebundled UNEs. Sprint encourages the Department to issue such an order to promote competition in the provision of local exchange service and access.

Additionally, Sprint contends that current Telco policies on this issue are contrary to the goals enumerated by Public Act 94-83, constitute a barrier to entry, effectively foreclose interconnection through unbundled network elements and impose additional costs burdens upon CLECs. Sprint claims that the Telco is acting in a discriminatory manner and violating provisions of the state law. Sprint expresses the opinion that permitting the Telco to unbundle its network by physically separating its already combined network elements and then requiring Sprint to physically recombine them would increase its costs unnecessarily and impede its effective entry into the Connecticut local exchange market. Furthermore, Sprint argues that this approach is not one that the Department recognized or sought to implement with its prior rulings promoting competition in telecommunications.

Further, Sprint asserts that the Department has more than enough reason and authority to order rebundling. First, Sprint notes that Connecticut is not in the Eighth Circuit and, therefore, not technically subject to the its ruling. Second, an order requiring the provision of rebundled UNEs would be consistent with Part II of Title II of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. In the opinion of Sprint, the Telcom Act conveys to new entrants a right to combine UNEs for the purpose of offering finished services. Moreover, the Telcom Act recognizes a distinction between the roles of a state commission as an arbitrator enforcing federal law and as an arbitrator enforcing applicable state law. Finally, the Eighth Circuit's decision confirms the authority of the State of Connecticut to decide the issue of the combination of UNE's under the Telcom Act. Sprint Comments, pp. 6-10.

Moreover, Sprint indicates that a number of states have issued rulings in the wake of the Eighth Circuit's decision that they possess the authority to order the recombination of UNEs. Sprint notes as an example the Michigan Public Service Commission determination that nothing in the Telcom Act or in the Eighth Circuit's decision limited the authority of state regulatory commissions acting under state law to regulate UNE combinations. Sprint also notes that the Michigan Commission concluded that 47 U.S.C. § 252(e)(3) specifically preserves states' authority to establish and enforce additional requirements on market participants. Separately, Sprint maintains

that the Washington Utilities and Transportation Commission rejected the argument advanced by ILECs that the Eighth Circuit's construction of the Telcom Act limited the power of state commissions to require ILECs to provide combinations of UNEs to CLECs and ordered the ILEC to combine all elements from the NID to the switch. Finally, Sprint notes that the Colorado Public Utilities Commission has reached a similar conclusion to that of both Washington and Michigan. Sprint Comments, pp. 13-15.

3. Regulatory Constraint

Sprint acknowledges that the Eighth Circuit decision invalidated a number of provisions of the FCC's Local Competition Order including those related to the pricing of UNEs and the ILEC's obligation to recombine UNEs. Sprint further maintains that the Eighth Circuit held that § 251(d)(3) of the Telcom Act does not require all state commission orders to be consistent with all of the FCC's regulations promulgated under § 251 of the Telcom Act. Sprint maintains that in that ruling, the Eighth Circuit overturned the FCC solely on the basis that the statutory language could not support the finding of a federal duty to combine UNEs. According to Sprint, the Eighth Circuit did not find such a duty inconsistent with the Telcom Act, just absent from it. Specifically, the Eighth Circuit did not reach the merits of whether rebundling furthered local exchange competition. Sprint Comments, pp. 12 and 13.

4. Shared Transport

Sprint maintains that shared transport does not supply functionality equivalent to that of a rebundled network element platform assembled by an ILEC. Sprint states that shared transport is an integral component of the UNE-P; however, it is not a substitute for the UNE-P. Shared transport is, according to Sprint, just one element contained in the list of elements comprising the UNE platform. Sprint asserts that although shared transport is an essential piece of the UNE-P, (without shared transport, the UNE platform concept is inoperable), it will not serve as a substitute for the provision of recombined UNEs. Sprint also argues that provisioning shared transport can in no way replace the recombination of UNEs as a necessary option for CLECs. Accordingly, Sprint maintains that the Department must require that ILECs such as the Telco offer a recombined UNEs package which includes all network elements, including shared transport, to ensure that full and effective competition emerges in Connecticut. Sprint Comments, pp. 15 and 16.

H. WorldCom, Inc.

1. Competitive Need

WorldCom, Inc. (WorldCom) d/b/a Brooks Fiber Communications, concurs with AT&T and MCI that the Telco should be required to provide combinations of network elements at economic cost because it would promote competition in Connecticut, to the benefit of the state's local exchange customers. According to WorldCom, the ability to

use combinations of the Telco's network elements would greatly enhance WorldCom's ability to compete for local exchange customers outside of Hartford and Stamford where it currently has no facilities.

WorldCom states that if CLECs are not granted the ability to order combined elements from the Telco, competition in Connecticut will most likely be confined to those areas where CLECs have their own facilities. WorldCom maintains that if the Department does not place an affirmative obligation on the Telco to provide combinations of network elements at the request of a CLEC, customer choice of a local service provider in many areas of the state will be frustrated and delayed. Therefore, WorldCom urges the Department to require the Telco to provide network element combinations to CLECs in order to promote competition throughout the entire local exchange market in Connecticut. WorldCom Reply Comments, pp. 1 and 2.

2. Statutory Authority

WorldCom maintains that the Telco's obligations pertaining to combining network elements requires it to provide "reasonable, nondiscriminatory access to all equipment, facilities and services necessary to provide telecommunications services to customers." WorldCom agrees with MCI that combinations of network elements are "necessary" for facilities based providers "to provide telecommunications services to customers" who may be located off their networks. WorldCom concludes that under Conn. Gen. Stat. § 16-247b(b), the Department is clearly authorized to order the Telco to provide access to such combinations to CLECs in a reasonable and nondiscriminatory manner. WorldCom Reply Comments, p. 2.

3. Regulatory Constraint

WorldCom disagrees with the Telco's contention that the Eighth Circuit Decision and the Telcom Act prohibit the Department from ordering it to combine network elements. According to WorldCom, no question of state regulatory authority was at issue in the Eighth Circuit Decision. WorldCom argues that the section of the Eighth Circuit's ruling pertaining to network element combinations dealt only with a question of federal law, whether the FCC has the authority under the Telcom Act to require ILECs to provide network element combinations. WorldCom states that there are various sections of the Telcom Act that expressly acknowledge independent state authority to regulate telecommunications services.

In citing a recent decision of the Illinois Commerce Commission in Docket 96-0486/96-0569, Investigation into Forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport and Termination of Traffic; Illinois Bell Telephone Company: Proposed Rates, Terms and Conditions for Unbundled Network Elements, WorldCom argues that the Department should follow the Illinois Commission and reject the Telco's argument that a mandate to offer combined elements would replicate its resale offering and, allow CLECs to game the system. WorldCom contends that by ordering the Telco to provide CLECs with combined elements, the Department can provide end users with a wider variety of service offerings and price options.

Lastly, WorldCom disagrees with the Telco's argument that the availability of rebundled network elements would disrupt the proper flow of contributions to the universal service fund. WorldCom asserts that the availability of UNEs is antithetical to Universal Service Funding and that this argument failed before the Eighth Circuit and should not be successful here. WorldCom Reply Comments, pp. 2-4.

4. Shared Transport

WorldCom asserts that the FCC has already determined that shared transport is a network element that ILECs must provide. WorldCom argues that shared transport does not include the network interface device at the customer's premises, the loop or the entire switching function and is not equivalent in functionality to combinations of other elements and facilities that can be used to provide telecommunications service. WorldCom Reply Comments, p. 4.

IV. DEPARTMENT ANALYSIS

A. BACKGROUND

The Department initiated this proceeding for the express purpose of resolving certain differences of opinion amongst the principal parties with regard to their respective roles and responsibilities in the provisioning and use of UNEs. Differences expressed by the parties on the subject stem, in part, from the fact that neither federal nor state law is sufficiently clear on the question of UNE combinations to satisfy the parties. The Department also considers the recent opinion rendered by the Eighth Circuit insufficient in resolving the matter satisfactorily to all concerned.

The Department's interest in this matter is relatively limited and is generally expressed by the four questions presented in the Scope of the Proceeding above. First, the Department sought to understand the relative importance of network element combinations to the development of competition in Connecticut. Second, the Department sought to determine what abilities it had to ensure such network element combinations would be available if such combinations were deemed to be needed and necessary to the development of competition.

The Department held no opinion on the specific subject of network element combinations at the time this proceeding was initiated. Accordingly, it sought comments from interested parties in developing a body of expert advice before rendering any opinion on the matter. A number of parties responded to the Department's request to participate in this proceeding providing Comments and Reply Comments on the subject as outlined by the Department in its Scope.

The Department has determined the information provided by the parties to be beneficial in its effort to understand: a) the combination issue; and b) the attendant effects of any position adopted regarding network element combinations. The Department is of the opinion that it now possesses considerably more and better information regarding the issue of network element combinations than at any time in the past, principally due to the efforts of parties to this proceeding.

B. LEGAL AUTHORITY

The threshold issue to examine is whether the Department has the authority to order recombination of elements by an incumbent local exchange provider. As recounted above, the FCC, in its Local Competition Order, required incumbent local exchange carriers (ILECs) to provide recombined elements to requesting CLECs. That Local Competition Order, through which the FCC intended to enable the states and the FCC to begin to implement sections 251 and 252 of the Telcom Act, became the subject of multi-jurisdiction litigation consolidated at the Eighth Circuit.[3] On July 18, 1997, the Eighth Circuit overturned several of the regulations promulgated by the FCC in its Order, including a subsection of 47 C.F.R. § 51.315 which required ILECs to combine network elements in any manner requested by a CLEC, with certain parameters. Iowa Utilities Board v. FCC, 120 F.3d 753. On October 14, 1997, at the request of parties to that litigation, the Eighth Circuit struck down additional subsections to § 51.315 which could have required ILECs to supply in a combined form unbundled network element service that already existed in combination. In doing so, the Eighth Circuit stated that:

> Section 251(c)(3) requires an incumbent LEC to provide access to the elements of its network only on an unbundled basis (as opposed to a combined) basis. Stated another way, § 251(c)(3) does not permit a new entrant to purchase the incumbent LEC's assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements) in order to offer competitive telecommunications services. To permit such an acquisition of already combined elements at cost based rates for unbundled access would obliterate the careful distinctions Congress has drawn between access to unbundled network elements on the one hand and the purchase at wholesale rates of an incumbent's telecommunications retail services for resale on the other. Accordingly, the Commission's rule, 47 C.F.R. § 51.315(b), which prohibits an incumbent LEC from separating elements that it may currently combine, is contrary to § 251(c)(3) because the rule would permit the new entrant access to the incumbent LEC's network elements on a bundled rather than an unbundled basis.
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> Iowa Utilities Board v. FCC, *Order on Petitions for Rehearing.*

Because the Eighth Circuit's ruling appears to have removed any requirement under the Telcom Act for an ILEC to offer rebundled network elements under Federal law, the Department's March 17, 1998 Request for Written Comments specifically requested argument on the authority to order recombination under state law.

The Department deemed questions related to independent state authority relevant because the Telcom Act contains certain savings clauses relative to existing and new state regulations and requirements:

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[3] The Department was a party to that proceeding.

> (b) EXISTING STATE REGULATIONS- Nothing in this part shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996, or from prescribing regulations after such date of enactment, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part.
>
> (c) ADDITIONAL STATE REQUIREMENTS- Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.
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> Telcom Act, Section 261.

As participants to this proceeding are aware, the Connecticut General Assembly acted to remove the barriers to competition in its local markets with the passage of Public Act 94-83, which predated the February 8, 1996 passage of the Federal Telcom Act. Consequently, if the Department determines that Public Act 94-83 empowers it to require rebundling, the Section 261 savings clauses must still be satisfied.

The Department concludes that an order requiring a telephone company to recombine unbundled network elements, entered under state law, is necessary to further competition in the provision of telephone exchange service (for reasons discussed in detail below), and would not be inconsistent with Part II of Title II of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. The Eighth Circuit's ruling in Iowa Utilities Board addresses the ability of the FCC or states to order recombination based on the requirements of § 251(c)(3) of the Telcom Act, and foreclosed reliance on § 251(c)(3) as a source of authority to order recombinations. It did not consider whether independent authority exists under state law, as that question was not at issue.

C. REBUNDLED ELEMENTS UNDER STATE LAW

The Department has posed four questions intended to solicit opinion from affected parties regarding the issues in question attempting to examine the relative value of any modification to network interconnection policies and practices previously adopted by the Department in Docket No. 94-07-01, The Vision for Connecticut's Telecommunications Infrastructure; Docket No. 94-07-04, DPUC Investigation into the Competitive Provision of Local Exchange Service in Connecticut; Docket No. 94-10-02, DPUC Investigation into the Unbundling of the Telco's Local Telecommunications Network; Docket No. 94-10-04, DPUC Investigation into Participative Architecture; Docket No. 95-06-17, Application of the Southern New England Telephone Company for Approval to Offer Unbundled Loops, Ports and Associated Interconnection Arrangements; Docket No. 96-09-22, DPUC Investigation Into The Southern New England Telephone Company Unbundled Loops, Ports and Associated Interconnection Arrangements and Universal Service Fund in Light of the Telecommunications Act of 1996; and Docket No. 97-04-10, Application of The Southern New England Telephone

Company For Approval of Total Service Long Run Incremental Cost Studies and Rates for Unbundled Network Elements.

At issue in this proceeding is whether the Department's network interconnection policies and practices adopted in the above referenced proceedings are sufficient to support the development of local exchange competition in Connecticut. The submissions tendered in this proceeding present divergent opinions on the subject depending upon the respective role of the sponsor in the Connecticut market (i.e., incumbent or prospective entrant) but generally present views consistent with those expressed by the respective party in prior Department proceedings addressing network interconnection.

Although it is based on the broader interconnection policies promulgated by the Department in the above referenced Dockets, this proceeding reflects the current status in the evolution of a competitive market. Submissions by the Parties strongly suggest that both the form and substance of local exchange competition will be substantially affected by the Department's decisions in this proceeding. Several Parties have suggested that the very idea of local exchange competition in the Connecticut market will, in large part, be determined by the outcome of this proceeding.

The Department does not necessarily agree with the magnitude of import suggested by some of the Parties' Comments. However, this proceeding represents the Department's commitment to ensuring that the competitive framework adopted over the past decade supports the development of efficient and effective competition in an evolving marketplace. The Department also considers the subjects addressed in this proceeding to be of such importance to the goal of competition that it has subjected each party's comments to careful reading and due consideration in the course of its review in this proceeding.

Some critics may characterize the need for further investigation of this subject as unnecessary given the general availability of the interpretations accorded the subject by the Eighth Circuit, the guidelines provided by the FCC in its past Decisions and Orders and the Decisions rendered by this Department in a number of prior proceedings. However, after reviewing those same Opinions, Orders and Decisions, the Department concluded that the combined efforts of the regulatory community and the judiciary to address specific interconnection issues were insufficient to satisfactorily resolve the issue of network element combinations and discharge it of the statutory responsibilities it holds to facilitate competition in Connecticut. Accordingly, the Department initiated this proceeding as a means to ensure that it has done everything possible to afford all interested parties a full and fair opportunity to compete in the Connecticut telecommunications market.

It is this full and fair opportunity to compete that is embodied in Public Act 94-83 and which guides the Department's actions in this proceeding. Indeed, the goals stated by the crafters of Public Act 94-83 best articulate the guideposts used by the Department when considering this issue. Those goals, contained in Conn. Gen. Stat. § 16-247a(a), encourage this Department to promote effective competition in the market for telecommunications services. To the extent that the availability of individual network elements, common transport and resale are insufficient to promote effective